

Office of the  
CLARK COUNTY LAND USE HEARING EXAMINER

1300 Franklin Street  
P.O. Box 9810  
Vancouver WA 98668-9810  
Phone (360) 397-2375

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**NOTICE TO PARTIES OF RECORD**

**Project Name:** ALBER'S SUBDIVISION  
**Case Number:** PLD2009-00016; SEP2009-00031; WET2009-00026

The attached decision of the Land Use Hearing Examiner will become final and conclusive unless a written appeal is filed with the Board of Clark County Commissioners, 6<sup>th</sup> floor, Public Service Center, 1300 Franklin Street, Vancouver, Washington, no later than 5:00 p.m. on, **August 14, 2009** (14 calendar days after written notice of the decision is mailed).

The Hearing Examiner's procedural SEPA decision is final and not appealable to the Board of County Commissioners.

All other appeals must be written and contain the information required under CCC 40.510.030(H), and placed in the following preferred format:

1. Project Name
2. Case Number
3. Name and signature of each petitioner: The name and signature of each petitioner and a statement showing that each petitioner is entitled to file the appeal under Section 40.510.030(H)(1). If multiple parties file a single petition for review, the petition shall designate one (1) party as the contact representative for all contact with the responsible official.
4. Introduction:  
Provide a brief history of the case. This should include a chronology of dates of related applications, cases numbers, and a description of the proposal as it relates to the decision being appealed
5. Standard of Review:  
Describe what standard of review (i.e., board's discretion to reverse the examiner's decision) you believe applies to board's review of the alleged errors (e.g., substantial evidence for challenges to findings of fact; de novo review for code interpretation; or, clearly erroneous for issues involving application of code requirements to particular facts).
6. Alleged Errors/Response to Alleged Errors:  
Identify the specific aspect(s) of the decision being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error (i.e., reference the relevant exhibits and passages, court cases, etc.).

The appeal fee is **\$303**

The Board of Commissioners shall hear appeals of decisions based upon the written record before the examiners, the examiner's decision, and any written comments

received in the office of the Board within the following submittal deadlines measured from the date of the filing of the appeal:

- Fourteen (14) calendar days for the appellant's initial comments;
- Twenty-eight (28) calendar days for all responding comments; and,
- Thirty-five (35) calendar days for appellant reply comments, which are limited to the issues raised in the respondent's comments.

Written comments shall be limited to arguments asserting error in or support of the examiner decision based upon the evidence presented to the examiner.

Unless otherwise determined by the Board for a specific appeal, the Board shall consider appeals once a month, on a reoccurring day of each month. The day of the month on which appeals are considered shall be consistent from month to month as determined by Board.

The Board may either decide the appeal at the designated meeting or continue the matter to a limited hearing for receipt of oral argument. If continued, the Board of Commissioners shall designate the parties or their representatives to present argument, and permissible length thereof, in a manner calculated to afford a fair hearing of the issues specified by the Board of Commissioners. At the conclusion of its public meeting or limited hearing for receipt of oral legal argument, the Board of Commissioners may affirm, reverse, modify or remand an appealed decision.

Mailed on: **July 31, 2009**

ALBER'S SUBDIVISION  
LD2009-00016; SEP2009-00031; WET2009-00026  
HEARING DATE: 6/25/09

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Battle Ground, WA 98604

**Derek & Bethany Huegel**  
**10600 NE 189<sup>th</sup> St**  
**Battle Ground, WA 98604**

ALBER'S SUBDIVISION  
PLD2009-00016; SEP2009-00031;  
WET2009-00026  
HEARING DATE: 6/25/09

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**BEFORE THE LAND USE HEARINGS EXAMINER  
CLARK COUNTY, WASHINGTON**

REGARDING THE APPLICATION FOR A )	<b>FINAL ORDER</b>
PRELIMINARY PLAT TO SUBDIVIDE )	
APPROXIMATELY 5.54 ACRES INTO 5 SINGLE- )	<b>ALBER'S SUBDIVISION</b>
FAMILY RESIDENTIAL LOTS LOCATED IN THE )	<b>PLD2009-00016; SEP2009-00031;</b>
RC-1 ZONING DISTRICT IN UNINCORPORATED )	<b>WET2009-00026</b>
CLARK COUNTY, WA. )	

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**APPROVED WITH CONDITIONS**

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**INTRODUCTION**

The applicant is proposing to subdivide approximately 5 and ½ acres into five single-family lots. The site is located on the south side of NE 189<sup>th</sup> Street at the 102<sup>nd</sup> block. The site is generally flat. There are wetlands and buffers along the western and southern portions on the site. The site is located within the Battle Ground School District, the Clark Public Utilities Water District, Meadow Glade Sewer District, and Fire District 11. Surrounding uses are all single-family residential and except to the north which is zoned R1-20/UH, RC-1 zoning predominates in all other directions.

**Location:** 10313 NE 189<sup>th</sup> Street; Legal Description: Tax Lot 43 (193783) in the Southeast quarter of Section 9, Township 3 North, Range 2 East of the Willamette Meridian

**Applicant:** Sterling Design, Inc.  
2208 E. Evergreen Blvd. Suite A  
Vancouver, WA 98661

**Owner:** Arrianne Albers  
10313 NE 189<sup>th</sup> Street  
Battle Ground, WA 98604

**Comp Plan:** Urban Low Density

**Zoning:** RC-1

**Applicable Laws:** Clark County Code: Title 15 (Fire Prevention), Section 40.210.020 (Rural Residential), Section 40.350 (Transportation), Section 40.350.020 (Transportation Concurrency), Chapter 40.380 (Stormwater & Erosion Control I), Sections 40.500 and 40.510 (Procedures), Section 40.540 (Land Division Ordinance), Section 40.570 (SEPA), 40.570 (SEPA Archaeological), Section 40.610 (Impact Fees), 24 (Public Health), RCW 58.17, and the Clark County Comprehensive Plan

Vesting:

April 10, 2009.

### **HEARING AND RECORD**

The Public Hearing on this matter was originally scheduled for June 25, 2009, but was continued to July 23, 2009 to allow SEPA comment and the record was closed at the conclusion of the hearing. Records of all testimony received are filed at the Clark County Department of Community Development.

The Examiner has conducted an unaccompanied site visit prior to the Hearing.

#### **Pre- hearing Public Comments:**

The County has received public comments from neighbors (see Exhibits 10 & 12) who have concerns with the proposed subdivision. Renee Henderson is concerned that NE 189<sup>th</sup> Street is not adequate to serve the proposed lots and stormwater runoff will impact adjacent properties. Rosemary Ferguson is concerned about the same issue in Exhibit 15 as is Ted and Colleen Atmore in Exhibit 14. The Atmore's are also concerned with how the water runoff is to be directed. The present system in place for their street begins on the north side of the road - a big ditch that drains the Jackson Subdivision and all land area going east, including a wetlands area owned by the county, until it connects to an underground culvert system that goes under NE 189<sup>th</sup> Street. It then drains south and east then goes under NE Cramer Road into a drainage ditch of a tributary of Salmon Creek. The present house on the Alber's Subdivision property has a culvert under NE 189<sup>th</sup> that drains into the open ditch and flows east into this system which is located just west of NE 105<sup>th</sup> Ct, a private road that floods easily and is adjacent to their property. Three homes are located on this private road.

Robert Cochell claims to own a small strip of property between proposed lots 4 & 5 and NE 189<sup>th</sup> Street (a portion of Tax Lot 27-193769). If true it would appear the applicant may not have legal access to NE 189<sup>th</sup> for those two lots, but the applicant has responded per Exhibit 16 that N.E. 189<sup>th</sup> Street was originally deeded to Clark County in Volume 82, Book 178. The intent was for N.E. 189<sup>th</sup> Street to follow the North line of the Southeast quarter of Section 9. The street as constructed is south of the North line of the Southeast quarter. Mr. Cochell's Deed puts his south line in the middle of the "**constructed road**". (AFN 4069111). The confusion is that if N.E. 189<sup>th</sup> Street was constructed along the North line of the Southeast quarter of Section 9, then there would in fact be a strip owned by him on the south side of 189<sup>th</sup>, but being the road is not built on the North line then there is nothing owned by the Cochell's that is south of the north line of the Southeast quarter of section 9 and north of Gary's property. (See Findings 7 through 11)

#### **Hearing Summary:**

Richard Daviau, the lead County Planner on this application, introduced the site, highlighted key issues in the Staff Report and made a recommendation of approval. In doing so he testified that the Staff was able to withdraw its negative recommendation because the applicant was able to produce the necessary letter from the Department of Archaeology outlining potential prehistoric significance of the site and agreed that redesigning of the building for Lot 5 together with a restrictive covenant would adequately protect those interests (Ex 20).



As a consequence the Staff was able to issue an MDMS determination on June 25, 2009 with mitigation conditions recommended by the state (4 conditions) – Ex 21. The first condition is prior to final plat approval and conditions 2-4 are prior to construction. SEPA comment period has now ended without an appeal or comments. Rosemary Ferguson did submit a CD with pictures addressing the road conditions – Ex 23, but no direct SEPA comments.

Joel Stirling, the applicant's registered engineer, accepted the Staff Report and conditions.

Theodore Atmore, was the first neighbor to testify. His only contention that 189<sup>th</sup> will be open through to Meadowland Acres subdivision, which is now closed off by the gate. There is no reason to un-gate this because this is a substandard road. There are small portions of it that are less than 18 feet in width and the ROW are not 20 feet on each side. The pictures purport to show the width of the road and the condition of the pavement up to Kramer where the grass was coming through the pavement. There were also indentations (19) from a step sewer, about an inch or ½ inch and heavier traffic would accelerate the deterioration.

Coleen Atmore, also testified, also had pictures. Her biggest concern has always been the width of the street which has never been improved. The gate is there to allow emergency trucks to Meadowland. She did her research starting in 2001, but she measured today in two places where the pavement is 18 feet, but has no shoulder. The storm water discharges into Salmon Creek passing underneath 189<sup>th</sup>. The pavement adjacent to catch basin is deteriorating and there is no shoulder for about a 4 foot, 4 inch gap. It works fine now, but there is not that much traffic. Meadowland people have said that they will use 189<sup>th</sup>, because going east it will save them five minutes.

Renee Henderson, had two concerns, through traffic and drainage issues. The through traffic will bring Meadowland Acres (24 homes) and Jackson Homestead (8 homes). She is opposed to cross-circulation because the road is not consistently 18 feet wide – no shoulders or sidewalk, except for 18 feet long of sidewalk on the north. This will become a short cut for people going to Battle Ground. The north side of 189<sup>th</sup> is within the Battle Ground urban growth boundary and their lot sizes will be a lot smaller when it develops and when that develops additional traffic will be produced.

The intersection of Cramer and 189<sup>th</sup> is known as five corners, because there are three streets intersecting there. If the road is open that will bring more traffic to this intersection. That will be unsafe. She introduced pictures to illustrate her point. On 109<sup>th</sup> Avenue, which is part of this intersection to the north you have a high school and a day care, a printing company with semi-truck traffic, some commercial buildings, and an apartment building. To the south, on 109<sup>th</sup> you have an elementary school, the Seven Day Adventist church, and residential homes. Cramer is the main connection between 503 and I-205. Cramer has no shoulders.

Her drainage concerns now are addressed. She also had pictures of the intersections and she submitted a petition from all but two residents of 189<sup>th</sup> opposing opening of the gate (Ex 29). Meadowland originally agreed not to have access to 189<sup>th</sup> and so did Mr. Jackson. The addition of four homes does not justify opening the road.

Rosemary Ferguson, submitted a CD showing the pictures of the five corner intersection. The

road is too narrow to meet their safety concerns.

Sarah Cochell, a neighbor to the north, said that there is a dispute pertaining to twenty feet, a little sliver on the east side of the site abutting 189<sup>th</sup>. There is a question who will do the definitive survey.

Mr. Daviau said the staff report has addressed it and regardless who owns, the applicant can proceed. If she owns it, the applicant will have to do a joint driveway, otherwise he can access 189<sup>th</sup> directly. The ownership issue is a private matter that has to be resolved prior to final plat approval.

Dave McGrath, a neighbor from the north, testified that his survey indicates that 189<sup>th</sup> abutting his property is owned by John Clark (Ex 30) and not a County right of way. West of his property 189<sup>th</sup> is a private gravel roadway.

Brad Hazen, the County's Engineering Representative, has testified that he has actually measured the roadway and that it is 18 feet wide and one foot shoulder. As a neutral person he has witnessed and measured the roadway, he will submit into the record, WSDOT definition of the shoulders and pictures. (Ex 31)

Theodore Atmore, pointed out where on the north side of 189<sup>th</sup>, the pavement comes up right to the ditch and therefore Mr. Hazen cannot be correct in his testimony. There simply is not 12 inches of shoulder when the pavement drops into the ditch.

Mr. Hazen stood by his testimony.

Mr. Stirling closed, by testifying, that 189<sup>th</sup> is a rural road. The applicant has relied on a survey of the road. Cross-circulation is important. On the intersection he testified that his firm was the engineer on Jackson Homestead. The reasons why Jackson Homestead did not connect with Meadowland Acres was that the roadway in front of Albers was substandard. Working for the Seventh Adventist Church his firm realigned 102<sup>nd</sup> Avenue, to obtain a 90 degree intersection and the Columbia Academy was also required to align its road. At that point the intersection was deemed safe. The applicant will improve his frontage on 189<sup>th</sup> Street.

Differences and opinions of different surveyors are known to exist. The applicant will have a licensed surveyor refer to Mr. McGrath's survey and review the disparity. Condition A-1d will be sufficient to access the property. If Mr. McGrath is correct, the applicant can still dedicate the needed right of way.

The Examiner than asked what would be the consequence if he found the road substandard. Mr. Hazen replied that the applicant would have to build the off-site road 20 feet wide.

Mr. Stirling than offered to move the gate to his eastern boundary just like Jackson Homestead, and then get access through Meadowland Acres. The idea that four additional lots should improve the entire 189<sup>th</sup> street would be disproportionate. Also he could not access to the south (187<sup>th</sup>) because of wetlands and archeological buffers.

## FINDINGS

Only issues and approval criteria raised in the course of the application, during the hearing or before the close of the record are discussed in this section. All approval criteria not raised by staff, the applicant or a party to the proceeding have been waived as contested issues, and no argument with regard to these issues can be raised in any subsequent appeal. The Examiner finds those criteria to be met, even though they are not specifically addressed in these findings. The following issues were either raised by the applicant, addressed by staff in its report, or by agency comments on the application, and the Examiner adopts the following findings:

### LAND USE:

#### Finding 1 - Development Standards

The project is located in the Rural Center zone that requires a minimum lot size of one acre. The minimum lot width requirement is 100 feet, and the minimum lot depth requirement is 140 feet. All five lots meet these standards. The minimum setbacks are as follows:

- Front 25 feet
- Side 10 feet
- Rear 10 feet

There is no maximum lot coverage and the maximum building height is 35 feet for residential buildings.

The preliminary plat appears to show compliance with setbacks requirements.

#### Finding 2 - Building Envelope for Lot 1

The submitted development plan shows a 47 foot deep building envelope for proposed Lot 1 that is bordered by wetland buffer to the south and NE 189<sup>th</sup> Street right-of-way to the north. Reviewing the GIS information as well the map attached to the wetland comments (Exhibit 17), it appears the building envelope is significantly smaller than proposed by the applicant. Prior to final plat approval, the applicant needs to confirm that an adequate building envelope exists for proposed Lot 1. A loss of one lot may occur if a significantly smaller envelope exists. (See Condition D-1)

#### Finding 3 - State Platting Standards (RCW 58.17)

With conditions of approval, staff finds the proposed subdivision will make appropriate provisions for public health, safety, and general welfare of the community. Connection of the proposed residences to public water and sewer, as well as treatment of any increase of stormwater runoff, will be provided, to protect groundwater supply and integrity. Impact Fees will also be required to contribute a proportionate share toward the costs of school, park and transportation provisions, maintenance and services.

### Conclusion (Land Use):

The proposed preliminary plan meets the land use requirements of the Clark County Code subject to conditions.

### WETLANDS:

#### Finding 4

The wetland and buffer boundaries shown on the preliminary plat were verified and the proposed development envelopes were approved under a previously issued Wetland Determination (WET2009-00026). The site contains Category IV wetlands that require 40 foot buffers for the proposed development (Moderate Intensity per Table 40.450.030-5).

The proposed development envelopes comply with CCC 40.450.030.G.2. and the proposed Land Division can comply approval standards in CCC 40.450 provided that standard conditions are met prior to Final Plat Approval.

#### Conclusion

Based upon the development site characteristics and the proposed development plan, the proposed preliminary site plan complies with the requirements of the Wetland Protection Ordinance PROVIDED that certain conditions are met. Therefore, the requirements of the preliminary plan review criteria are satisfied. (See Exhibit 17 for complete wetland comments and conditions of approval)

#### ARCHEOLOGICAL:

##### Finding 5

The proposal is located within a high probability area for containing cultural resources and the applicant completed an archaeological pre-determination. Artifacts were found and an archaeological survey is required to be submitted to the Washington State Department of Archaeology and Historic Preservation (DAHP) for review.

DAHP responded on June 23, 2009 (20) and the staff found that:

1. The applicant shall redesign the building envelope for Lot 5 as shown on the plan attached to Exhibit 20.
2. All ground-disturbing activities on Lot 5 and ground-disturbing activities on Lot 4 within the boundaries of Site 45CL508 shall be monitored by a professional archaeologist.
3. A monitoring plan shall be prepared and reviewed by DAHP prior to any ground - disturbing activities on Lot 5 and within the site boundaries on Lot 4.
4. Alternatively, the building envelope for Lot 4 can be redesigned to avoid the west area of the archaeological site.

#### TRANSPORTATION CONCURRENCY:

##### Finding 6

The applicant submitted a traffic profile for this proposal in accordance with CCC 40.350.020.B. Staff has determined that additional trips associated with the proposed development do not exceed travel speed, delay and LOS standards.

There was a great of discussion whether the five corners intersection of 109<sup>th</sup> Avenue, Cramer Rd and 189<sup>th</sup> Street, was safe. Numerous pictures were introduced from many angles, apparently during the afternoon school pick up hours, to show that seeing into the intersection from various angles might be difficult. It is clear that the intersection requires caution; however no accident evidence was adduced. The Concurrency staff found that this

intersection in the vicinity of the proposed development would be minimally impacted by the proposed development. From the circulation plan submitted, it is apparent that only those 32 residences in Meadowland and Jackson heading towards Battle Ground would go east, the west traffic to Cramer road would go in the opposite direction. Therefore, there is no basis to disagree with the concurrency staff that further analysis and mitigation by the applicant were not required. The proposed development complies with the Concurrency Ordinance CCC 40.350.020.

There was further argument the essence of which was that 189<sup>th</sup> has substandard because the paved width was less than 18 feet in at least two segments and there was also a few gaps of several feet that did not have 1 foot shoulders on each side. Exhibit 31 defines shoulder width and purpose. Mr. Hazen, the county engineer testified that he inspected, measured the roadway and that it met the standard. Several neighbors disagreed and submitted photographs, which showed that there was no level shoulder in some areas and that the 1-foot width sloped towards at least one drainage outlet or that there was not one foot to walk on.

The purpose of this discussion is that if 189<sup>th</sup> is substandard then the gate which is now closed would have to be kept, albeit in a slightly different location, so as not to permit travel eastward. In the alternative the applicant would have to bring the road up to standard which would be a disproportionate burden for four lots.

While the discussion was somewhat emotional, and the road may not be perfect in terms of dimensions, and it could use another resurfacing, the argument, common to the urban edge developments, is that the County Staff wants cross-circulation, and the residents want their dead-end, to preserve the lifestyle they have been accustomed to. The road dimension is only a substitute for a privacy argument. In practical terms, the cross-circulation would be very minor and the amount of additional traffic inconsequential; however, given the testimony it would be prudent for transportation staff and the applicant to review the information provided and make determination based on strict compliance with the applicable regulation. A condition of approval, will assume cross-circulation as a default option, unless final engineering review determines 189<sup>th</sup> to be significantly substandard.

## TRANSPORTATION

### Finding 7 - Frontage Roads NE 189<sup>th</sup> Street

NE 189<sup>th</sup> Street is classified as a Rural Local Access roadway with 50 feet of total right of way with 24 foot total wide pavement with a pedestrian walkway. The applicant is responsible for a min 20 foot half-width roadway. (See Condition A-1b). Different issues were raised about competing surveys; however, the outcome is that the applicant can make his frontage improvements to provide access, even if in the east side of the property he might have to design a joint access for lots 1 and 2 – see below.

### Finding 8 - Tax Lot 27 (193769)

It appears by the Assessor's tax lot map and GIS information that a portion of Tax Lot 27 (20 feet wide by 187 feet long) is blocking the applicants frontage improvements and driveway access from lots 4 and 5 to NE 189th Street. County GIS shows Tax Lot 27 is owned by Robert Cochell. While this is a private issue for the applicant to resolve, a condition of approval is warranted.

Prior to final engineering plan approval, the applicant shall provide documentation that provides legal right of access for proposed lots 4 and 5 across Tax Lot 27 (193769) to the public right-of-way of NE 189th Street. If the applicant can not provide legal access to NE 189th Street, then the driveway access to lots 4 and 5 shall be by a joint driveway that can legally access NE 189th Street. (See Condition A-1d)

Finding 9 - Street Extensions for NE 187<sup>th</sup> Street

Under CCC 40.350.030(B)(9)(a), where a public or private road has been constructed, created or stubbed in such a manner as to be able to be extended, then right-of-way or private easements necessary to such extension or widening and falling within parcels being developed shall be granted or created as a condition of development approval.

Engineering staff finds that NE 187<sup>th</sup> Street has the potential to be extended to the west in the future; therefore, the applicant is required to dedicate a minimum 25 foot half-width right-of-way to Clark County. (See Condition A-1c)

Neighbors suggested using 187<sup>th</sup> to access this subdivision and avoid the cross-circulation issue altogether, but wetlands and archeological findings mitigate against using this approach.

Finding 10 - Driveway Pave Back

Clark County code requires rural driveways to be paved back a min 20 feet from the edge of roadway or to the right of way line whichever is greater by 12 to 35 feet in width (see Condition E-1).

Conclusion (Transportation):

The proposed preliminary plan, subject to the condition, meets the transportation requirements of the Clark County Code and is feasible.

STORMWATER:

Finding 11 - Applicability

This project is creating more than 5,000 square feet of new impervious area and is subject to the Stormwater and Erosion Control Ordinance (CCC 40.380) (see Condition D-3).

Conclusion (Stormwater):

The proposed preliminary stormwater plan, subject to the conditions above, is feasible. Therefore, the requirements of the preliminary plan review criteria are satisfied.

FIRE PROTECTION:

Finding 12 - Fire Marshall Review

This application was reviewed by Tom Scott in the Fire Marshal's Office.<sup>1</sup>

Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval

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<sup>1</sup> Tom can be reached at (360) 397-2375 x4095 or 3323, or e-mail at [tom.scott@clark.wa.gov](mailto:tom.scott@clark.wa.gov). Information can be faxed to Tom at (360) 759-6063. Where there are difficulties in meeting these conditions or if additional information is required, contact Tom in the Fire Marshal's office immediately.

process. (See Condition E-2)

Finding 13 - Fire Flow/Hydrants

Fire flow in the amount of 500 gallons per minute supplied for 30 minutes duration is required for this application. Information from the water purveyor indicates that the required fire flow is available at the site, estimated at 1,000 gpm. The indicated existing fire hydrants are adequate.

Finding 14 - Fire Apparatus Access/Turnaround

The roadways and maneuvering areas as indicated in the application shall meet the requirements of the Clark County Road Standard. Provide an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface and capable of supporting the imposed loads of fire apparatus. (See Condition D-4)

New private driveways in excess of three hundred (300) feet in length shall be provided with an approved turnaround at the terminus. Turnouts shall be provide at intervals five hundred (500) feet or less, such that no portion of the driveway is in excess of three hundred (300) feet from an approved turnaround or turnout. (See Condition D-9a)

Conclusion (Fire Protection):

The proposed preliminary plan, subject to conditions identified above, meets the fire protection requirements of the Clark County Code.

HEALTH DEPARTMENT:

Finding 15

Submittal of a “Health Department Evaluation Letter” is required as part of the Final Construction Plan Review application. If the Evaluation Letter specifies that an acceptable “Health Department Final Approval Letter” must be submitted, the Evaluation Letter will specify the timing of when the Final Approval Letter must be submitted to the county (e.g., at Final Construction Plan Review, Final Plat Review or prior to occupancy). The Health Department Evaluation Letter will serves as confirmation that the Health Department conducted an evaluation of the site to determine if existing wells or septic systems are on the site, and whether any structures on the site have been/are hooked up to water and/or sewer. The Health Department Final Approval Letter will confirm that all existing wells and/or septic systems have been abandoned, inspected and approved by the Health Department (if applicable). (See Condition D-5)

WATER & SEWER SERVICE:

Finding 16

The applicant has submitted utility reviews from Clark Regional Wastewater and Clark Public utilities indicating that public sewer and water is available to the subject site in NE 189<sup>th</sup> Street. All lots in the proposed plat must connect to an approved public sewer and water system. A copy of the final acceptance letter from the sewer and water purveyor should be submitted to the Health Department with the final plat mylar. The applicant needs to comply with all requirements of the purveyor. (See Condition D-6)

IMPACT FEES:

Finding 17

All residential lots created by this plat (except proposed lot 3 with the existing residence) will produce impacts on schools and traffic, and will be subject to School (SIF) and Traffic Impact Fees (TIF) per dwelling. The site is located in the Rural 1 transportation sub-area with a TIF of \$2,716.92 per dwelling. The site is located in Battle Ground School District with a SIF of \$8,290.00 per dwelling

Impact fees shall be paid prior to issuance of a building permit for each lot. If a building permit application is made more than three years following the date of preliminary plat approval, the impact fees will be recalculated according to the then-current ordinance rate. (See Condition D-7c & E-3)

**SEPA DETERMINATION**

The likely SEPA determination of Non-Significance (DNS) in the Notice of Development Review Application is now final subject to the archaeological conditions request by the State.

**DECISION**

Based upon the proposed plan (identified as Exhibit 5) and the findings and conclusions stated above, the Hearings Examiner Approves this request and the applicant is required to adhere to all applicable codes and laws, and is subject to SEPA Mitigation Measures and the following conditions of approval:

**Conditions of Approval**

**A Final Construction Plan Review for Land Division  
Review & Approval Authority: Development Engineering**

Prior to construction, a Final Construction shall be submitted for review and approval, consistent with the approved preliminary plan and the following conditions of approval:

- A-1 Final Construction Plan – The applicant shall submit and obtain County approval of a final construction plan in conformance to CCC 40.350 and the following conditions of approval:
- a. Archaeology - A note shall be placed on the face of the final construction plans "If any cultural resources and/or human remains are discovered in the course of undertaking the development activity, the Office of Archaeology and Historic Preservation in Olympia and Clark County Community Development shall be notified. Failure to comply with these State requirements may constitute a Class C Felony, subject to imprisonment and/or fines".
  - b. NE 189<sup>th</sup> Street along the applicant's frontage shall be engineered to Clark County Drawing number 25 (Rural Local Access roadway) with a 5 foot wide pedestrian sidewalk. This roadway shall be a minimum 20 feet in width with a minimum right-of-way dedication of 25 feet half-width. (See Finding 7)



- c. The applicant shall dedicate a min 25 foot half-width right of way along there southern property line for the future extension of NE 187<sup>th</sup> Street.
- d. The applicant shall provide documentation that provides legal right of access for proposed lots 4 and 5 across Tax Lot 27 (193769) to the public right-of-way of NE 189th Street. If the applicant can not provide legal access to NE 189th Street, then the driveway access to lots 4 and 5 shall be by a joint driveway that can legally access NE 189th Street. (See Finding 8)

A-2 Transportation:

- a. Signing and Striping Plan: The applicant shall submit a signing and striping plan and a reimbursable work order, authorizing County Road Operations to perform any signing and pavement striping required within the County right-of-way. This plan and work order shall be approved by the Department of Public Works prior to final plat or final site plan approval.
- b. Traffic Control Plan: Prior to issuance of any building or grading permits for the development site, the applicant shall obtain written approval from Clark County Department of Public Works of the applicant's Traffic Control Plan (TCP). The TCP shall govern all work within or impacting the public transportation system.

A-3 Final Transportation Plan (On-Site & Frontage) - The applicant shall submit and obtain County approval of a final transportation design in conformance with CCC 40.350.

A-4 Final Transportation Plan (Off site cross circulation) – If after reviewing the evidence produced at the hearing the County determines that NE 189<sup>th</sup> Street is substandard, the applicant shall submit a plan to move the gate blocking 189<sup>th</sup> further east to allows access to his parcels on 189<sup>th</sup> from the west. If the County after said review shall determine that NE 189<sup>th</sup> Street materially complies with relevant rural local access road standard, the applicant shall remove the existing gate to allow from cross-circulation along NE 189<sup>th</sup> Street.

A-5 Final Stormwater Plan - The applicant shall submit and obtain County approval of a final stormwater plan designed in conformance with CCC 40.380.

A-6 Erosion Control Plan - The applicant shall submit and obtain County approval of a final erosion control plan designed in accordance with CCC 40.380.

A-7 Excavation and Grading - Excavation/grading shall be performed in compliance with Appendix Chapter J of the 2003 International Building Code (IBC); and, drainage facilities shall be provided, in order to ensure that building foundations and footing elevations can comply with CCC 14.04.252.

<b>B</b>	<b>Prior to Construction of Development Review &amp; Approval Authority: Development Inspection</b>
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Prior to construction, the following conditions shall be met:

B-1 Pre-Construction Conference - Prior to construction or issuance of any grading or building permits, a pre-construction conference shall be held with the County.

- B-2 Erosion Control - Prior to construction, erosion/sediment controls shall be in place. Sediment control facilities shall be installed that will prevent any silt from entering infiltration systems. Sediment controls shall be in place during construction and until all disturbed areas are stabilized and any erosion potential no longer exists.
- B-3 Erosion Control - Erosion control facilities shall not be removed without County approval.
- B-4. All ground-disturbing activities on Lot 5 and ground-disturbing activities on Lot 4 within the boundaries of Site 45CL508 shall be monitored by a professional archaeologist.
- B-5. A monitoring plan shall be prepared and reviewed by DAHP prior to any ground disturbing activities on Lot 5 and within the site boundaries on Lot 4.
- B-6. Alternatively, the building envelope for Lot 4 can be redesigned to avoid the west area of the archaeological site.

<b>C</b>	<b>Provisional Acceptance of Development Review &amp; Approval Authority: Development Inspection</b>
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Prior to provisional acceptance of development improvements, construction shall be completed consistent with the approved final construction/land division plan and the following conditions of approval:

- C-1 None

<b>D</b>	<b>Final Plat Review &amp; Recording Review &amp; Approval Authority: Development Engineering</b>
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Prior to final plat approval and recording, the following conditions shall be met:

- D-1 The applicant shall confirm that an adequate building envelope exists for proposed Lot 1. A loss of one lot may occur if a significantly smaller envelop exists. (See Finding 2)
- D-2 NE 189<sup>th</sup> Street frontage improvements and Right-of-way dedication shall be completed.
- D-3 All Stormwater facilities shall be constructed according the engineering drawings.
- D-4 The applicant shall provide an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface and capable of supporting the imposed loads of fire apparatus (see Finding 14).
- D-5 Submittal of a "Health Department Evaluation Letter" is required as part of the Final Construction Plan Review application. If the Evaluation Letter specifies that an acceptable "Health Department Final Approval Letter" must be submitted, the Evaluation Letter will specify the timing of when the Final Approval Letter must be submitted to the county (e.g., at Final Construction Plan Review, Final Plat Review or

prior to occupancy). The Evaluation Letter will serve as confirmation that the Health Department conducted an evaluation of the site to determine if existing wells or septic systems are on the site, and whether any structures on the site have been/are hooked up to water and/or sewer.

- D-6 All lots in the proposed plat must connect to an approved public sewer and water systems. A copy of the final acceptance letter from the sewer and water purveyor shall be submitted to the Health Department with the final plat mylar. The applicant shall comply with all requirements of the purveyor.
- D-7 Developer Covenant - A "Developer Covenant to Clark County" shall be submitted for recording to include the following:
- a. Critical Aquifer Recharge Areas - "The dumping of chemicals into the groundwater and the use of excessive fertilizers and pesticides shall be avoided. Homeowners are encouraged to contact the State Wellhead Protection program at (206) 586-9041 or the Washington State Department of Ecology at 800-RECYCLE for more information on groundwater /drinking supply protection."
  - b. Erosion Control - "Building Permits for lots on the plat shall comply with the approved erosion control plan on file with Clark County Building Department and put in place prior to construction."
  - c. Impact Fees: "In accordance with CCC 40.610, the School and Traffic Impact Fees for each dwelling in this subdivision are: \$8,290.00 (Battle Ground School District) and \$2,716.92 (Rural 1 TIF subarea) respectively. There will be a one lot impact fee credit for proposed Lot 3 due to the existing residence. The impact fees for lots on this plat shall be fixed for a period of three years, beginning from the date of preliminary plat approval, dated \_\_\_\_\_, and expiring on \_\_\_\_\_. Impact fees for permits applied for following said expiration date shall be recalculated using the then-current regulations and fees schedule."
- D-8 Addressing - At the time of final plat, existing residence(s) that will remain may be subject to an address change. Addressing will be determined based on point of access.
- D-9 Plat Notes - The following notes shall be placed on the final plat:
- a. Fire Turnaround: "New private driveways in excess of three hundred (300) feet in length shall be provided with an approved turnaround at the terminus. Turnouts shall be provided at intervals five hundred (500) feet or less, such that no portion of the driveway is in excess of three hundred (300) feet from an approved turnaround or turnout."
  - b. Sidewalks: "Prior to issuance of occupancy permits, sidewalks shall be constructed along all the respective lot frontages. Sidewalks are attached except along the frontage of (insert street name) which is detached."
  - c. Utilities: "An easement is hereby reserved under and upon the exterior six (6) feet at the front boundary lines of all lots for the installation, construction, renewing,

operating and maintaining electric, telephone, TV, cable, water and sanitary sewer services. Also, a sidewalk easement, as necessary to comply with ADA slope requirements, shall be reserved upon the exterior six (6) feet along the front boundary lines of all lots adjacent to public streets."

- d. Driveways: "All residential driveway approaches entering public roads are required to comply with CCC 40.350."
- e. Archaeological (all plats): "If any cultural resources are discovered in the course of undertaking the development activity, the Office of Archaeology and Historic Preservation in Olympia and Clark County Community Development shall be notified. Failure to comply with these State requirements may constitute a Class C Felony, subject to imprisonment and/or fines."

<b>E</b>	<b>Building Permits</b> <b>Review &amp; Approval Authority: Customer Service</b>
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Prior to issuance of a building permit, the following conditions shall be met:

- E-1 The driveway shall be paved back 20 feet from the edge of the roadway or right-of-way line whichever is greater. Driveway width is 12 to 35 feet. (See Finding 10)
- E-2 Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process.
- E-3 Impact Fees - The applicant shall pay impact fees for the proposed lots as follows (There will be a one lot impact fee credit due to the existing residence):
  - a. \$8,290.00 per dwelling for School Impact Fees (Battle Ground School Dist.)
  - b. \$2,716.92 per dwelling for Traffic Impact Fees (Rural 1 TIF Sub-area)

If the building permit application is made more than three years following the date of preliminary site plan approval, the impact fees shall be recalculated according to the then-current rate.

- E-4 The applicant shall redesign the building envelope for Lot 5 as shown on the plan attached to Exhibit 20.

<b>F</b>	<b>Occupancy Permits</b> <b>Review &amp; Approval Authority: Building</b>
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Prior to issuance of an occupancy permit, the following conditions shall be met:

- F-1 None

<b>G</b>	<b>Development Review Timelines &amp; Advisory Information</b> <b>Review &amp; Approval Authority: None - Advisory to Applicant</b>
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- G-1 Land Division - Within 5 years of preliminary plan approval, a Fully Complete application for Final Plat review shall be submitted.

G-2 Department of Ecology Permit for Construction Stormwater - A permit from the Department of Ecology (DOE) is required if:

- The construction project disturbs one or more acres of land through clearing, grading, excavating, or stockpiling of fill material; AND
- There is a possibility that stormwater could run off the development site during construction and into surface waters or conveyance systems leading to surface waters of the state.

The cumulative acreage of the entire project whether in a single or in a multiphase project will count toward the one acre threshold. This applies even if the applicant is responsible for only a small portion [less than one acre] of the larger project planned over time. The applicant shall Contact the DOE for further information.

Dated this 31st day of July, 2009



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J. Richard Forester  
Hearing Examiner

*NOTE: Only the decision and the condition of approval are binding on the applicant, owner or subsequent developer of the subject property because of this order. Other parts of the final order are explanatory, illustrative and/or descriptive. There may be requirements of local, state, or federal law, or requirements, which reflect the intent of the applicant, the county staff, or the Hearings Examiner, but they are not binding on the applicant as a result of the final order unless included as a condition.*

Appeals:

Only a party of record may appeal an appeal of any aspect of the Hearing Examiner's decision, except the SEPA determination, to the Board of County Commissioners. A party of record includes the applicant and those individuals who signed the sign-in sheet or presented oral testimony at the public hearing, and/or submitted written testimony prior to or at the Public Hearing on this matter.

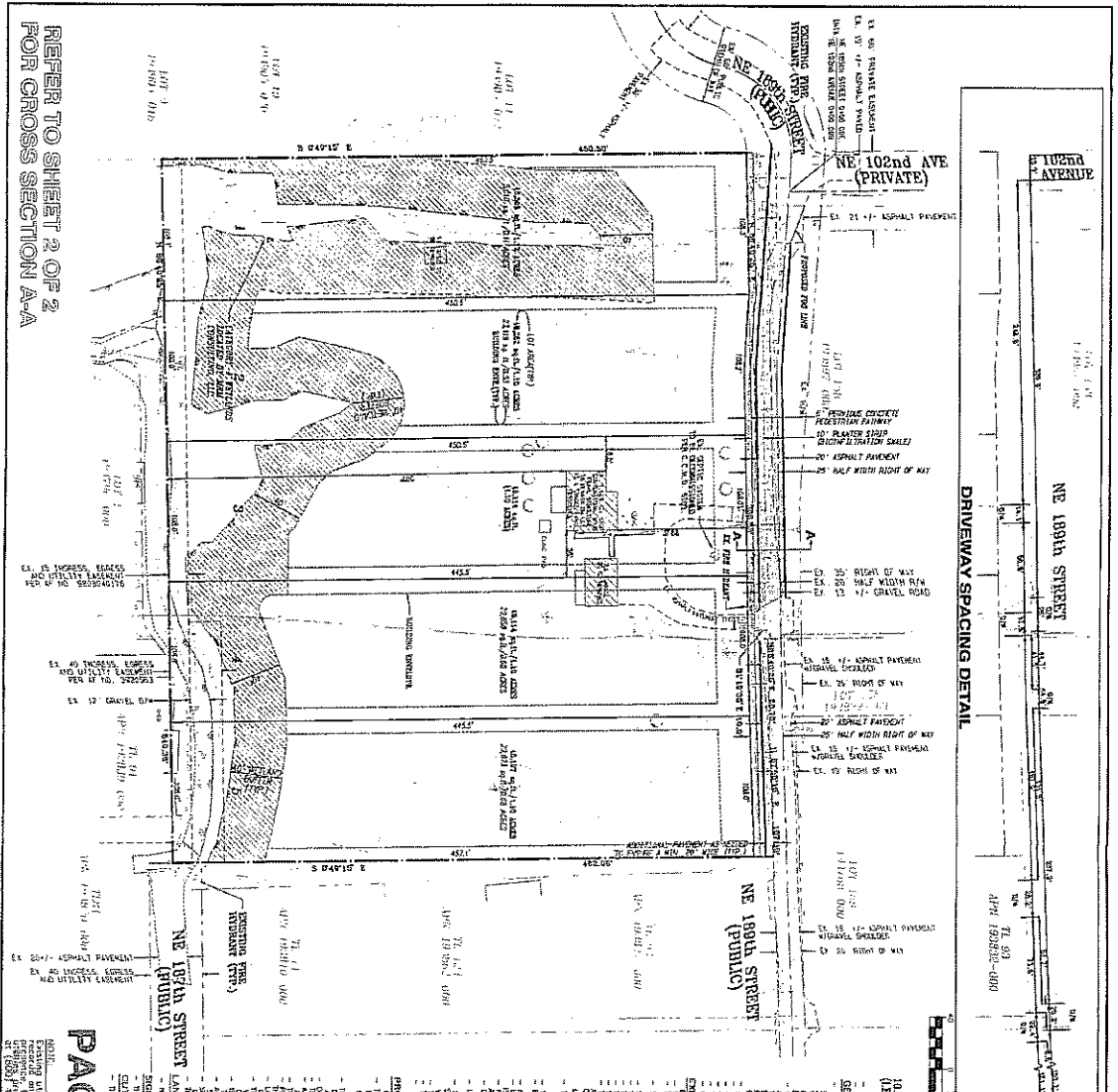
The appeal shall be filed with the Board of County Commissioners, 1300 Franklin Street, Vancouver, Washington, 98668, within fourteen (14) calendar days from the date the notice of final land use decision is mailed to parties of record.

Any appeal of the final land use decisions shall be in writing and contain the following:

1. The case number designated by the County and the name of the applicant;
2. The name and signature of each person or group (petitioners) and a statement showing that each petitioner is entitled to file an appeal as described under Section 40.510.030 (H) of the Clark County Code. If multiple parties file a single petition for review, the petition shall designate one party as the contact representative with the Development Services Manager.
3. The specific aspect(s) of the decision and/or SEPA issue being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied, on to prove the error; and,

4. If the petitioner wants to introduce new evidence in support of the appeal, the written appeal also must explain why such evidence should be considered, based on the criteria in subsection 40.510.030(H)(3)(b);
5. A check in the amount of \$303.00 (made payable to the Clark County Board of County Commissioners).

REFER TO SHEET 2 OF 2  
FOR CROSS SECTION A-A

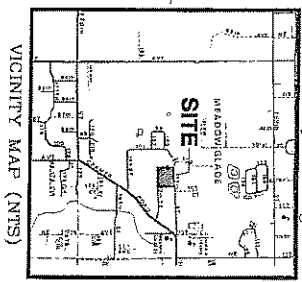


DRIVEWAY SPACING DETAIL



GRAPHIC SCALE

- 10. PROPOSED DEVELOPMENT (SEE LAND DIVISION PLAN)
- 11. EXISTING CONDITIONS (SEE SHEET 1)
- 12. LAND DIVISION PLAN
- 13. EXISTING CONDITIONS (SEE SHEET 1)
- 14. EXISTING CONDITIONS (SEE SHEET 1)
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VICINITY MAP (NTS)

**ALBERS SUBDIVISION**  
A Preliminary Short Plat  
within a portion of the SE 1/4  
of Sec. 9, T3N, R2E, W.M.  
Clark County, Washington

**PAC2008-00120**

**SITE INFORMATION**

**PREPARED BY:**  
STERLING DESIGN, INC.  
1000 1st Avenue, Suite 100  
Tacoma, WA 98402  
Phone: (253) 755-1234  
Fax: (253) 755-1234  
www.sterling-design.com

**PROJECT:**  
ALBERS SUBDIVISION

**SHEET INDEX**

**PROPOSED DEVELOPMENT PLAN**

**W/EXISTING CONDITIONS**

**PROPOSED SUBDIVISION PLAN**

**PROPOSED SUBDIVISION PLAN**







# HEARING EXAMINER EXHIBITS

**APPLICATION: ALBER'S SUBDIVISION**

**CASE NUMBERS: PLD2009-00016; SEP2009-00031; WET2009-00026**

**Hearing Date: June 25, 2009**

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
1		CC Development Services	Aerial Map
2		CC Development Services	Vicinity Map
3		CC Development Services	Zoning Map
4		CC Development Services	Comprehensive Plan Map
5	4/2/09	Applicant, Sterling Design, Inc.	Proposed Development Plan with Existing Conditions, Topographic Survey, Proposed Stormwater Plan
6	4/2/09	Applicant, Sterling Design, Inc.	<ol style="list-style-type: none"> <li>1. Cover Sheet <ul style="list-style-type: none"> <li>• With Table of Contents</li> </ul> </li> <li>2. Application Form</li> <li>3. Application Fee</li> <li>4. Pre-Application Conference Report</li> <li>5. Developer's GIS Packet Information</li> <li>6. Narrative</li> <li>7. Legal Lot Determination Information</li> <li>8. Approved Preliminary Plats Abutting the Site.</li> <li>9. Preliminary Boundary Survey</li> <li>10. Proposed Development Plan(s)</li> <li>11. Soils Analysis Report</li> <li>12. Preliminary Stormwater Design Report</li> <li>13. Proposed Stormwater Plan</li> <li>14. Project Engineer Statement of Completeness and Feasibility</li> <li>15. Traffic Profile</li> <li>16. State Environmental Review</li> <li>17. Sewer District Utility Review Letter</li> <li>18. Water Utility Review Letter</li> <li>19. Health Department Project Review Evaluation Letter</li> <li>20. Covenants or Restrictions</li> <li>21. Associated Applications &amp; Required Information <ul style="list-style-type: none"> <li>A. Traffic Circulation plan</li> <li>B. Archaeological Information</li> <li>C. Sight Distance Analysis</li> <li>D. Wetland Delineation &amp; Boundary Report</li> <li>E. Wetland Rating Form &amp; Report</li> </ul> </li> <li>22. Submittal Copies</li> </ol>
7	4/16/09	CC Development Services	Fully Complete Determination

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
8	4/30/09	CC Development Services	Affidavit of Mailing Public Notice
9	4/30/09	CC Development Services	Notice of Type III Development Review Application, Optional SEPA Determination of Non-Significance and Public Hearing
10	5/13/09	Renee Henderson	Comment Letter with the Map
11	5/14/09	Dept of Ecology	Agency Comments
12	5/14/09	Robert S.Cochell	Comment Letter
13	5/20/09	CC Development Services	Notice of Public Hearing for June 25, 2009
14	5/13/09	Ted and Colleen Atmore	Comment Letter
15	5/13/09	Rosemary Ferguson	Comment Letter
16	5/18/09	Applicant, Sterling Design, Inc.	Applicant Response for the Public Comments
17	6/10/09	CC Development Services	Wetland Determination Staff Report
18	6/10/09	CC Development Services	Affidavit of Posting Public Notice
19	6/10/09	CC Development Services - Richard Daviau, the Project Planner	Type III Development & Environmental Review, Staff Report & Recommendation
20	6/23/09	DAHP	Cultural Resources Survey Letter
21	6/25/09	CC Development Services	SEP2009-00031 MDNS Determination
22	6/25/09	CC Development Services	Pictures of Power Point Presentation
23	6/25/09	Rosemary Ferguson	Letter and CD of pictures
24	7/1/09	CC Development Services	Notice of Public Hearing for July 23, 2009
25	7/23/09	Theodore Atmore	Road Pictures
26	7/23/09	Colleen Atmore	Pictures
27	7/23/09	Colleen Atmore	Map of Stormwater
28	7/23/09	Renee Henderson	Map and 3 Pictures
29	7/23/09	Renee Henderson	Petition (2 Pages)
30	7/23/09	Dave McGrath	Survey Map (Besida)
31	7/23/09	Brad Hazen, PW	Design Manual Page and Pictures
32			
33			